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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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10 ANNABEL ABREO,) No. EDCV 06-00771 (SS)
11 Plaintiff,)
12 v.) MEMORANDUM DECISION AND ORDER
13 MICHAEL J. ASTRUE,)
14 Commissioner of the Social)
15 Security Administration,)
16 Defendant.)
17

18 Plaintiff Annabel Abreo ("Plaintiff") brings this action seeking to
19 overturn the decision of the Commissioner of the Social Security
20 Administration (hereinafter the "Commissioner" or the "Agency")
21 terminating her Supplemental Security Income ("SSI") benefits. This
22 matter is before the Court on the parties' Joint Stipulation ("Jt.
23 Stip.") filed on April 3, 2007. For the reasons stated below, the
24 decision of the Commissioner is AFFIRMED.

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PROCEDURAL HISTORY

In March 1988, the Commissioner determined that Plaintiff was disabled due to a severe mental impairment, paranoid schizophrenia. (Administrative Record ("AR") 13, 47). On September 20, 2000, after a continuing disability review, the Commissioner found that Plaintiff continued to be disabled and that she met the medical listing 12.03, i.e., schizophrenic, paranoid, and other psychotic disorders. (AR 25). On March 30, 2004, after a second continuing disability review, the Commissioner found that Plaintiff's health had improved and that she was no longer disabled. (AR 96).

On July 21, 2004, Plaintiff filed an appeal for reconsideration of disability review. (AR 90). On August 11, 2004, a Disability Hearing Officer determined that Plaintiff was no longer disabled. (AR 78-85). Plaintiff received a pre-hearing conference (January 14, 2005) and two hearing dates (May 11, 2005 & November 8, 2005) before Administrative Law Judge ("ALJ") John W. Belcher. (AR 293, 305, 319). On April 6, 2006, ALJ Belcher issued a decision finding that Plaintiff's mental health had improved and that her eligibility for SSI benefits ended effective March 1, 2004. (AR 13-21). The Appeals Council denied review and the ALJ's decision became the final decision of the Commissioner. (AR 3-5). Plaintiff initiated the instant action on July 19, 2006.

FACTUAL BACKGROUND

Plaintiff was born on March 6, 1967, and was thirty-eight years old at the time of the hearings. (See AR 67). She completed high school

1 and "beauty" college. (AR 311). Plaintiff did not work in the fifteen
2 years prior to the hearings. (See AR 347). At the time of her original
3 disability finding, Plaintiff suffered from substance abuse problems.
4 (See e.g., AR 80, (noting that in 2000, Plaintiff had a provisional
5 diagnosis of possible psychoactive substance induced psychotic disorder
6 due to a history of drug abuse); AR 68 (Plaintiff reporting to Dr.
7 Kikani that she was an "ex-drug addict" but is now sober); AR 332
8 (Plaintiff's sister reported that initial disability finding was likely
9 related to drug use)).

10
11 **A. Relevant Medical History**

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13 Plaintiff's mother reported that Plaintiff did not receive any
14 treatment for her mental impairments between 1988 and 2004. (See AR
15 317). However, during the 2000 continuing disability review, it was
16 reported that Plaintiff saw a doctor in the Los Angeles area once
17 between 1988 and 2000. The doctor's name, address, and phone number
18 could not be provided. (AR 53).

19
20 In the course of the Commissioner's 2000 continuing disability
21 review, Dr. Divy J. Kikani performed a psychiatric evaluation of
22 Plaintiff. (AR 67-71). Dr. Kikani diagnosed Plaintiff with "psychotic
23 disorder, not otherwise specified; rule out major depressive disorder,
24 with psychotic features; [and] rule out psychoactive substance induced
25 organic mood disorder versus psychoactive substance induced psychotic
26 disorder." (AR 69). He stated his Secondary Diagnosis as: "history of
27 psychoactive mixed substance abuse, including alcohol and marijuana in
28 the past. She is currently on diet pills." (AR 69). He assessed

1 Plaintiff to have a Global Assessment of Functioning ("GAF") score of
2 fifty.¹ (Id.).

3
4 Dr. Kikani determined that Plaintiff "show[ed] moderate impairment
5 in ability to interact normally with co-workers, supervisors and public
6 and moderate impairment in ability to attend to the usual work situation
7 and ability to cope with routine changes at work. [Plaintiff] may be
8 expected to show moderate episodes of emotional deterioration at the
9 normal work situation[.]" (AR 70). Dr. Kikani also found that
10 Plaintiff should not handle her own finances. (Id.). Dr. Kikani
11 recommended that Plaintiff receive psychological testing to evaluate her
12 psychiatric symptoms. (Id.). He also suggested that Plaintiff should
13 be subjected to alcohol and drug testing to determine whether substance
14 abuse continues to contribute to her psychiatric symptoms. (Id.).

15
16 In the course of the Commissioner's 2004 continuing disability
17 review, Dr. Kikani performed another psychiatric evaluation of
18 Plaintiff. (AR 187-90). Dr. Kikani determined that Plaintiff had no
19 Axis I diagnosis. (AR 189). He noted that Plaintiff denied any current
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21 ¹ A Global Assessment of Functioning score is the clinician's
22 judgment of the individual's overall level of functioning. It is rated
23 with respect only to psychological, social, and occupational
24 functioning, without regard to impairments in functioning due to
25 physical or environmental limitations. See American Psychiatric
26 Association, Diagnostic and Statistical Manual of Mental Disorders, 32
27 (4th ed. 2000) (hereafter, "DSM IV").

28 A rating of 41-50 on the GAF scale indicates "[s]erious symptoms
(e.g., suicidal ideation, severe obsessional rituals, frequent
shoplifting) OR any serious impairment in social, occupational, or
school functioning (e.g., no friends, unable to keep a job)." See DSM
IV, at 34.

1 substance abuse. (AR 189-90). He also assessed that Plaintiff had a
2 GAF score of sixty.² (AR 189).

3
4 Dr. Kikani noted that Plaintiff "[was] devoid of any prominent
5 symptoms of psychosis, thought disorder, perceptual disturbances,
6 prominent mood disorder." (AR 189). He also found that Plaintiff did
7 not show any restriction or impairment in her daily activities or social
8 functioning. (AR 190). Dr. Kikani mentioned that Plaintiff's
9 concentration, persistence, and pace were not impaired. (Id.). Dr.
10 Kikani observed that there was a "sharp contrast in psychiatric and
11 mental status evaluation between 9/5/2000 and the evaluation date of
12 2/3/04[.]" (Id.).

13
14 In January 2005, consultative examiner, Dr. Adam Cash, conducted a
15 psychological evaluation of Plaintiff. (AR 213-17). Dr. Cash could not
16 state a diagnosis for Plaintiff. (AR 217). He found that due to the
17 questionable validity of her psychological tests, it was likely that
18 Plaintiff was "at the very least exaggerat[ing] her deficits." (Id.).

19
20 In 2004, after the disability hearing officer denied Plaintiff's
21 request for reconsideration and found that Plaintiff was no longer
22 disabled, Plaintiff sought psychiatric treatment. Beginning in October
23 2004, Plaintiff began receiving psychiatric treatment from Dr. Maria

24
25 ² A rating of 51-60 on the GAF scale indicates "[m]oderate symptoms
26 (e.g., flat affect and circumstantial speech, occasional panic attacks)
27 OR moderate difficulty in social, occupational, or school functioning
28 (e.g., few friends, conflicts with peers or co-workers)." See DSM IV,
at 34.

1 Salanga at the Vista Community Counseling Center of the County of San
2 Bernardino Department of Behavioral Health. (See AR 251). Her initial
3 evaluation noted that Plaintiff suffered from schizophrenia, had a
4 history of substance abuse, and had a GAF score of forty-five. (AR 249-
5 50). Dr. Salanga prescribed ten milligrams of Abilify and ten
6 milligrams of Paxil. (AR 239). The most recent notations from Dr.
7 Salanga report that Plaintiff is not suffering any side effects from the
8 medication. (AR 241). Each of Plaintiff's visit summaries notes that
9 Plaintiff is "feeling better," "fine," or "continuing to do well." (See
10 e.g., AR 241-42, 244-48, 280-83).

11
12 **B. Plaintiff's Testimony**

13
14 Plaintiff testified that she sought therapy in late 2004 because
15 she was hearing voices. (AR 329-30). However, she reports that once
16 she began taking the prescribed medication, the voices stopped. (AR
17 329). Plaintiff testified that she only heard voices for three months
18 prior to seeking treatment and that she did not hear voices while she
19 was abusing drugs. (AR 331-32). She also reported that she no longer
20 had a substance abuse problem. (AR 333). When Plaintiff was asked to
21 identify the date that she last used illegal drugs, Plaintiff's answer
22 was inaudible. (Id.). In addition, Plaintiff testified that she did
23 not suffer from medication side effects. (AR 329). Plaintiff also
24 stated that she believes that she "could work" and her sister reported
25 that Plaintiff wants to work. (AR 333-34).

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THE EVALUATION OF DISABILITY

A. The Initial Five-Step Evaluation

To qualify for disability benefits, a claimant must demonstrate a medically determinable physical or mental impairment that prevents him from engaging in substantial gainful activity³ and that is expected to result in death or to last for a continuous period of at least twelve months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant incapable of performing the work he previously performed and incapable of performing any other substantial gainful employment that exists in the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

To decide if a claimant is entitled to benefits, an ALJ conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:

- (1) Is the claimant presently engaged in substantial gainful activity? If so, the claimant is found not disabled. If not, proceed to step two.
- (2) Is the claimant's impairment severe? If not, the claimant is found not disabled. If so, proceed to step three.
- (3) Does the claimant's impairment meet or equal one of a

³ Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done for pay or profit. 20 C.F.R. §§ 404.1510, 416.910.

1 list of specific impairments described in 20 C.F.R. Part
2 404, Subpart P, Appendix 1? If so, the claimant is found
3 disabled. If not, proceed to step four.

4 (4) Is the claimant capable of performing his past
5 work? If so, the claimant is found not disabled.
6 If not, proceed to step five.

7 (5) Is the claimant able to do any other work? If not,
8 the claimant is found disabled. If so, the
9 claimant is found not disabled.

10 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d
11 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R. §§
12 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).
13

14
15 The claimant has the burden of proof at steps one through four, and
16 the Commissioner has the burden of proof at step five. Bustamante, 262
17 F.3d at 953-54. If, at step four, the claimant meets his burden of
18 establishing an inability to perform past work, the Commissioner must
19 show that the claimant can perform some other work that exists in
20 "significant numbers" in the national economy, taking into account the
21 claimant's residual functional capacity ("RFC"),⁴ age, education, and
22 work experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at
23 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may
24 do so by the testimony of a vocational expert or by reference to the
25 Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart
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27 ⁴ Residual functional capacity is "what [one] can still do
28 despite [his] limitations" and represents an "assessment based upon all
of the relevant evidence." 20 C.F.R. §§ 404.1545(a), 416.945(a).

1 P, Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel, 240
2 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both exertional
3 (strength-related) and nonexertional limitations, the Grids are
4 inapplicable and the ALJ must take the testimony of a vocational expert.
5 Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000).

6
7 **B. The Seven-Step Re-Evaluation**

8
9 In determining whether to discontinue disability benefits, the
10 Commissioner applies the following sequential evaluation.

- 11
12 (1) If the claimant has an impairment or combination of
13 impairments that meets or equals a listing, disability
14 continues.
- 15 (2) If the claimant does not meet or equal a listing, the ALJ will
16 determine whether medical improvement has occurred.
- 17 (3) If so, the ALJ will determine whether the improvement is
18 related to ability to work (i.e., to RFC).
- 19 (4) If no medical improvement related to a claimant's ability to
20 work has occurred, disability continues.
- 21 (5) If there has been medical improvement related to ability to
22 work, the ALJ will determine whether all the current
23 impairments, in combination are "severe," and if not,
24 disability ends.
- 25 (6) If the claimant meets the "severity" criteria, the ALJ will
26 determine the current RFC, and if the claimant is able to do
27 past work, disability ends.
- 28 (7) If the claimant remains unable to do past work, the ALJ will

1 determine whether the claimant can do other work. If claimant
2 cannot do other, disability continues.

3
4 20 C.F.R. § 416.994(b)(5). Once a claimant is found disabled, a
5 presumption of continuing disability arises. Bellamy v. Sec'y of Health
6 & Human Serv., 755 F.2d 1380, 1381 (9th Cir. 1985). Disability benefits
7 cannot be terminated unless substantial evidence demonstrates medical
8 improvement in the claimant's impairment so that the claimant is able to
9 engage in substantial gainful activity. See 42 U.S.C. § 423(f); Murray
10 v. Heckler, 722 F.2d 499, 500 (9th Cir. 1983).

11
12 To determine whether medical improvement has occurred, the
13 Commissioner (or ALJ) compares the claimant's current condition with the
14 condition at a comparison point in the past. See 20 C.F.R. §
15 416.994(b)(1)(vii). The comparison point date ("CPD") is the date of
16 the most recent favorable medical determination (i.e., the date claimant
17 was first found to be disabled). See 20 C.F.R. § 416.994(b)(1)(i) &
18 (b)(2)(i). The ALJ must compare the claimant's condition at the CPD to
19 claimant's present condition to determine whether there has been
20 improvement. Id. Whether there has been medical improvement is
21 determined by a comparison of prior and current medical evidence which
22 must show that there have been improvements in the symptoms, signs, and
23 laboratory findings associated with the claimant's impairment. Id. If
24 no medical improvement has occurred, the claimant's disability does not
25 cease. 20 C.F.R. § 416.991(b).

26
27 If medical improvement has occurred, the ALJ must determine whether
28 the medical improvement is related to the claimant's ability to work.

1 Id. To do so, the ALJ must compare the claimant's current RFC with the
2 RFC at the time of the most recent favorable decision. 20 C.F.R. §
3 416.994(b)(1)(vii). If the Commissioner finds medical improvement that
4 is related to claimant's ability to work, the next step is to determine
5 whether the claimant's impairments may, nonetheless, preclude
6 substantial gainful activity. 20 C.F.R. § 416.994(b)(1)(v).

7
8 **THE ALJ'S DECISION**

9
10 The ALJ determined that Plaintiff was no longer eligible to receive
11 supplemental security income benefits. (AR 20). The ALJ noted that
12 Plaintiff's original mental disability finding could have been affected
13 by Plaintiff's prior substance abuse. (AR 17). The ALJ then found that
14 Plaintiff's current mental impairments did not meet any impairment
15 described in 20 C.F.R. Part 404, Subpart P, Appendix 1. (AR 18, 20).
16 The ALJ assessed that Plaintiff's mental health had improved since the
17 time of the last favorable decision, September 2000. (See AR 18). The
18 ALJ found that Plaintiff had the RFC to perform work in the "light"
19 exertional capacity. (AR 18, 20). Although Plaintiff had no past
20 relevant work (AR 19), the ALJ determined that Plaintiff had the RFC to
21 perform other jobs that exist in significant numbers in the economy.
22 (Id.). The ALJ held that Plaintiff was no longer disabled as of March
23 1, 2004. (AR 20).

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STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's decision to deny benefits. The court may set aside the Commissioner's decision when the ALJ's findings are based on legal error or are not supported by substantial evidence in the record as a whole. Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996).

"Substantial evidence is more than a scintilla, but less than a preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence which a reasonable person might accept as adequate to support a conclusion." Id. To determine whether substantial evidence supports a finding, the court must "'consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming or reversing that conclusion, the court may not substitute its judgment for that of the Commissioner. Reddick, 157 F.3d at 720-21.

DISCUSSION

Plaintiff contends that the Commissioner's decision should be overturned for numerous reasons. First, she claims that the ALJ did not properly consider the psychiatric evaluation by Dr. Salanga. (Jt. Stip. at 3-5). Second, she asserts that the ALJ failed to appropriately consider the treating therapists' opinions of functional status. (Jt.

1 Stip. at 9-10). Third, Plaintiff claims that the ALJ did not properly
2 consider the 2004 evaluation by Dr. Kikani. (Jt. Stip. at 11-12).
3 Fourth, she asserts that the ALJ misstated the evidence in the record.
4 (Jt. Stip. at 13-14). Finally, Plaintiff complains that the ALJ failed
5 to properly consider the type, dosage, effectiveness, and side effects
6 of Plaintiff's medications. (Jt. Stip. at 15-18). The Court disagrees
7 with Plaintiff's contentions and instead finds that the ALJ's decision
8 should be affirmed.

9
10 **A. Plaintiff's Claims That The ALJ Improperly Considered The Treating**
11 **And Examining Psychiatrists' Opinions Do Not Warrant Remand**

12
13 Plaintiff complains that the ALJ improperly considered Dr.
14 Salanga's November 3, 2004 psychiatric evaluation of Plaintiff. (Jt.
15 Stip. at 3). Plaintiff argues that the ALJ only "peripherally refers to
16 Dr. Salanga's reports and ongoing treatment." (Jt. Stip. at 4). Also,
17 Plaintiff contends that the ALJ did not indicate whether he accepted or
18 rejected Dr. Kikani's 2004 report. (Jt. Stip. at 11-12). Plaintiff
19 asserts that these allege errors warrant remand. The Court disagrees.

20
21 Although the treating physician's opinion is entitled to great
22 deference, it is "not necessarily conclusive as to either the physical
23 condition or the ultimate issue of disability." Morgan v. Comm'r of
24 Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir. 1999). If the treating
25 doctor's opinion is not contradicted by another doctor, it may be
26 rejected only for "clear and convincing" reasons supported by
27 substantial evidence in the record. Lester v. Chater, 81 F.3d 821, 830
28 (9th Cir. 1995) (citing Baxter v. Sullivan, 923 F.2d 1391, 1396 (9th

1 Cir. 1991)). Even when the treating doctor's opinion is contradicted by
2 the opinion of another doctor, the ALJ may properly reject the treating
3 doctor's opinion by providing "'specific and legitimate reasons'
4 supported by substantial evidence in the record for so doing." Id.
5 (citing Murray, 722 F.2d at 502). Like the opinion of a treating
6 doctor, the opinion of an examining doctor, even if contradicted by
7 another doctor, can only be rejected for specific and legitimate reasons
8 that are supported by substantial evidence in the record. Id. at 830-
9 31. The ALJ can meet this burden by setting forth a detailed and
10 thorough summary of the facts and conflicting clinical evidence.
11 Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989).

12
13 Where the opinion of the claimant's treating physician is
14 contradicted, and the opinion of a nontreating source is based on
15 independent clinical findings that differ from those of the treating
16 physician, the opinion of the nontreating source may itself be
17 substantial evidence. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir.
18 1995). "It is then solely the province of the ALJ to resolve the
19 conflict." Id. When presented with conflicting medical opinions, the
20 ALJ must determine credibility and resolve the conflict. Batson v.
21 Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004) (citing
22 Matney).

23
24 **1. The ALJ Properly Considered Dr. Salanga's Evaluation Of**
25 **Plaintiff**

26
27 Here, the ALJ's decision contains a detailed and through summary of
28 all of the medical evidence documented in the record. (AR 13-15, 17-

1 18). Moreover, the ALJ noted that Dr. Salanga diagnosed Plaintiff with
2 paranoid schizophrenia. (AR 17). The ALJ determined, however, that Dr.
3 Salanga subsequently reported that Plaintiff was doing well on her
4 medication, had no psychotic symptoms, and no medication side-effects.
5 (AR 17; see also AR 241-42, 244-48, 280-83). As such, it is not clear
6 that the ALJ rejected Dr. Salanga's opinion. It appears that he
7 considered all of Dr. Salanga's findings as a whole rather than focusing
8 on her initial evaluation of Plaintiff.

9
10 Even if the ALJ's decision could be construed as rejecting Dr.
11 Salanga's initial evaluation, there was no error. Dr. Salanga's initial
12 evaluation was clearly contradicted by Dr. Kikani's February 2004
13 psychiatric evaluation. Dr. Salanga found that Plaintiff had an Axis I
14 diagnosis of paranoid schizophrenia (AR 250) while Dr. Kikani found that
15 Plaintiff had no Axis I diagnosis. (AR 189). Also, Dr. Salanga
16 assessed that Plaintiff had a GAF score of forty-five (AR 292) and Dr.
17 Kikani assessed that Plaintiff had a GAF score of sixty. (AR 189). As
18 Dr. Salanga's opinion was contradicted by an examining psychiatrist, the
19 ALJ need only provide specific and legitimate reasons for rejecting her
20 opinion. Lester, 81 F.3d at 830 (citation omitted).

21
22 The ALJ found that Plaintiff showed improvement in her condition in
23 a very short period of time. (AR 17). Dr. Salanga's records ranged
24 from November 2004 through January 2006. (AR 241-42, 244-48, 280-92).
25 Four months after beginning treatment, Dr. Salanga noted that
26 "[Plaintiff] reports doing fine. Depression is reduced. No suicidal or
27 homicidal thoughts. No [illegible] or prominent psychotic symptoms."
28 (AR 244). Subsequent notations report that Plaintiff was "feeling

1 better," "fine," or "continuing to do well." (AR 241-42, 244-48, 280-
2 83). The ALJ also observed that Plaintiff had not received any
3 psychiatric or psychological treatment prior to October 2004. (AR 17).
4 He noted that Plaintiff testified that she heard voices only three
5 months before seeking psychological treatment and that she had not
6 previously heard voices. (Id.). In addition, the ALJ observed that Dr.
7 Salanga's assessment was based on the Plaintiff's subjective complaints
8 as opposed to the definitive testing that Dr. Cash conducted. (AR 19).
9 The ALJ found that Plaintiff was not "fully credible." (Id.). As such,
10 any assessment based solely on her subjective complaints would also not
11 be reliable. The ALJ therefore provided specific and legitimate reasons
12 for rejecting Dr. Salanga's initial evaluation.

13
14 In sum, the ALJ's opinion does not expressly reject Dr. Salanga's
15 initial evaluation of Plaintiff. Moreover, to the extent that the ALJ
16 opinion could be construed as rejecting Dr. Salanga's opinion, he
17 provided specific and legitimate reasons for doing so. Accordingly,
18 Plaintiff's claim does not warrant remand.

19
20 **2. The ALJ Properly Considered Dr. Kikani's 2004 Evaluation Of**
21 **Plaintiff**

22
23 Plaintiff complains that the ALJ did not accept or reject Dr.
24 Kikani's observations that Plaintiff had some difficulty relating to
25 people in the work setting and that she required further testing. Her
26 claim regarding Dr. Kikani's 2004 report is meritless.

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1 The ALJ's decision discussed Dr. Kikani's 2004 report in detail.
2 (See AR 14, 17). He included Dr. Kikani's observation that Plaintiff
3 had difficulty relating to people in his assessment of Plaintiff's RFC.
4 (See AR 18). Moreover, the ALJ obtained another psychological
5 evaluation from Dr. Cash in January 2005. (AR 213-17). Dr. Cash
6 reviewed Dr. Kikani's 2004 report and conducted further psychological
7 testing. (See AR 214). As such, the Court finds that the ALJ
8 appropriately considered Dr. Kikani's 2004 report. It is evident that
9 the ALJ did not reject Dr. Kikani's opinion but, instead, accepted and
10 acted on Dr. Kikani's recommendations. Accordingly, Plaintiff's claim
11 does not warrant remand.

12 **B. Plaintiff's Claim That The ALJ Failed To Discuss The Treating**
13 **Therapists' Opinions Does Not Warrant Remand**

14
15 Plaintiff asserts that the ALJ's failure to discuss the opinions of
16 Soojin Kim, M.F.T., Anthony Akalemeaku, B.S., and Ruth Maloney,
17 L.M.F.T., was a legal error. (Jt. Stip. at 9-10). Specifically,
18 Plaintiff alleges that the ALJ should have considered Soojin Kim's Care
19 Necessity Questionnaire (AR 291-92), Antony Akalemeaku's notations
20 regarding a group therapy session (AR 243), and Ruth Maloney's
21 "interdisciplinary notes" (AR 251). (Jt. Stip. at 9). Plaintiff
22 contends that the ALJ was obligated to consider the therapists' opinions
23 and his failure to do so requires remand. This Court disagrees.

24
25 Because therapists are "other sources" pursuant to 20 C.F.R.
26 section 404.1513(d), an ALJ is entitled to accord them "less weight than
27
28

1 opinions from acceptable medical sources." Gomez v. Chater, 74 F.3d
2 967, 970-71 (9th Cir. 1996).⁵

3
4 Although the ALJ did not explicitly discuss or reject each
5 therapists' assessment, the ALJ's failure to address every single item
6 in the administrative record does not constitute legal error. An ALJ
7 need not expressly discuss all of the evidence presented. Howard ex
8 rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003) ("[I]n
9 interpreting the evidence and developing the record, the ALJ does not
10 need to 'discuss every piece of evidence.'" (quoting Black v. Apfel,
11 143 F.3d 383, 386 (8th Cir. 1998) and citing Vincent v. Heckler, 739
12 F.2d 1393, 1394-95 (9th Cir. 1984)). Further, an ALJ is not required to
13 discuss evidence that is neither significant nor probative. Id.

14
15 Here, the therapists' opinions were largely cumulative of Dr.
16 Salanga's assessments. Also, Soojin Kim's Care Necessity Questionnaire
17 was not a substantive assessment that would have added to the ALJ's
18 understanding of Plaintiff's condition. (AR 291). Anthony Akalemeaku's
19 notes are not probative of whether Plaintiff is disabled. They make
20 very general observations of Plaintiff's participation in group therapy
21 and offer the opinion of a non-medical staff person on whether Plaintiff
22 could benefit from the therapy. (See AR 243). As such, the therapists'
23 opinions are neither significant nor probative. Accordingly, the Court
24 reject's Plaintiff's contentions regarding the therapists' records.

25
26
27 ⁵ The Court notes that a therapist whose work is supervised by a
28 physician may constitute an acceptable medical source. See Gomez, 74
F.3d at 971. However, the Plaintiff reports that the therapists in
question are not acceptable medical sources. (See Jt. Stip. at 9).

1 In addition, the ALJ need not accept any opinion, if that opinion
2 is brief, conclusory, and inadequately supported by clinical findings.
3 See Batson, 359 F.3d at 1195 (rejecting a treating physician's opinion,
4 in part, because it was "conclusory in the form of a check list" and
5 "lack[ed] substantive medical findings to support [the] conclusion.");
6 Tonapetyan v. Comm'r of Soc. Sec., 242 F.3d 1144, 1149 (9th Cir. 2001)
7 (an ALJ may discredit treating physicians' opinions that are conclusory,
8 brief, and unsupported by the record as a whole). Here, Soojin Kim's
9 Care Necessity Questionnaire is a check-off report used to determine
10 whether a patient is qualified for Medi-Cal benefits. (See AR 291). It
11 does not indicate that substantial clinical findings were made or relied
12 upon. (See id.). As such, the ALJ was not required to address the
13 questionnaire.

14
15 Even if the ALJ erred in failing to discuss the therapists'
16 opinions, any error was harmless. The therapists' assessments and notes
17 were cumulative of Dr. Salanga's opinions. Soojin Kim's Care Necessity
18 Questionnaire evaluated Plaintiff as suffering from "schizophrenia,
19 paranoid type" and having a GAF score of forty-five. (AR 291). The ALJ
20 made a specific reference to Dr. Salanga's diagnosis of paranoid
21 schizophrenia and her assessment that Plaintiff's GAF score was forty-
22 five in his discussion of the medical evidence. (AR 17). Ruth
23 Maloney's assessment notes also conveyed the same concerns that Dr.
24 Salanga detailed in her records. (AR 251). Moreover, Anthony
25 Akalemeaku's group therapy notes are not probative of whether Plaintiff
26 was disabled. (AR 243). The ALJ thoroughly discussed Dr. Salanga's
27 initial assessment of Plaintiff and her subsequent notes showing marked
28 improvement in Plaintiff's condition. (AR 17-19). As the therapists'

1 records and opinions were cumulative of Dr. Salanga's assessments, the
2 ALJ essentially addressed the observations in the therapists' opinions.
3 Even if the therapists' opinions were fully credited, a reasonable ALJ
4 would have reached the same decision.

5
6 In sum, the ALJ did not err by failing to evaluate the therapists'
7 opinions discussed above. To the extent that the ALJ may have erred,
8 the error was harmless. Plaintiff is therefore not entitled to remand
9 on this claim.

10
11 **C. Plaintiff's Claim That The ALJ Misstated The Evidence Of Record**
12 **Does Not Warrant Remand**

13
14 Plaintiff complains that the ALJ misstated the evidence when he
15 noted that "[Plaintiff]" did not undertake medical treatment until after
16 the January 14, 2005 hearing; so that her improvement took place after
17 a comparatively short time. [AR 17]." (Jt. Stip. at 13-14). Plaintiff
18 claims that this error warrants remand because it is clear that the ALJ
19 overlooked important medical evidence in the file between October 2004
20 and January 2005. (Jt. Stip. at 14). The Court disagrees.

21
22 The ALJ erred in misstating the start date of Plaintiff's medical
23 treatment. (See AR 15). Nonetheless, the was harmless error as the
24 outcome would have been the same had the error not occurred. See Curry
25 v. Sullivan, 925 F.2d 1127, 1129 (9th Cir. 1990) (harmless error rule
26 applies to review of administrative decisions regarding disability);
27 Booz v. Sec'y of Health and Human Servs., 734 F.2d 1378, 1380-81 (9th
28 Cir. 1984) (same). The ALJ was obviously aware that Plaintiff was

1 receiving medical treatment as of October 2004. The ALJ reports that
2 Dr. Soltz noted Dr. Salanga diagnosed Plaintiff with paranoid
3 schizophrenia on October 12, 2004. (AR 17). Also, Plaintiff testified
4 that she began hearing voices three months before she sought treatment.
5 (AR 331). The ALJ's decision notes that Plaintiff never heard voices
6 before July 2004. (AR 17). As such, the ALJ must have been aware that
7 her treatment began as of October 2004.

8
9 As discussed above, the ALJ obviously considered the evidence of
10 medical treatment beginning in October 2004. Moreover, the ALJ's point
11 that Plaintiff's condition improved in a "comparatively short time" is
12 not an error. Plaintiff began treatment in October 2004. She reported
13 that she stopped hearing voices within three days of beginning her
14 medication. (AR 330). By March 2005, merely five months after
15 beginning treatment, Dr. Salanga had made very positive notations
16 regarding Plaintiff's condition and improvement. (See AR 244). As
17 such, the ALJ's mistake in stating the start date of Plaintiff's
18 treatment was harmless and does not warrant remand.

19
20 **D. Plaintiff's Claim Regarding Medication Side-Effects Does Not**
21 **Warrant Remand**

22
23 Plaintiff also contends that the ALJ erred by not considering the
24 side effects of Abilify and Paxil on Plaintiff. (Jt. Stip. at 15-18).
25 In support of her argument, Plaintiff cites that her dosage had recently
26 been reduced and the medical expert testified that such a reduction
27 "often indicates they might be having some side effects . . ." (Jt.
28 Stip. at 16 (quoting AR 325)). Plaintiff also notes that she testified

1 that she seems to be moving in "slow motion," that the medical expert
2 mentioned that Ambilify and Paxil is "strong medicine," and that the
3 medical expert commented that not many people become accustomed to anti-
4 psychotics. (Jt. Stip. at 16 (quoting AR 335-36)). Plaintiff then
5 lists the various side-effects that people have when taking Abilify and
6 Paxil. (Jt. Stip. at 17). Plaintiff's claim is not persuasive.

7
8 The "type, dosage, effectiveness, and side effects" of any
9 medication taken by the claimant to alleviate his or her pain or other
10 symptoms are factors relevant to a disability determination and should
11 be considered by the ALJ. 20 C.F.R. § 404.1529(c)(3)(iv); see also
12 Social Security Ruling ("SSR") 96-8p, available at, 1996 WL 374184; SSR
13 96-7p, available at, 1996 WL 374186. However, a claimant bears the
14 burden of proving that an impairment, including a medication's side
15 effects, is disabling. Miller v. Heckler, 770 F.2d 845, 849 (9th Cir.
16 1985) (claimant failed to meet burden of proving that an impairment is
17 disabling where he produced no clinical evidence showing that his
18 prescription narcotic use impaired his ability to work); Thomas v.
19 Barnhart, 278 F.3d 947, 960 (9th Cir. 2002) (upholding the ALJ's
20 rejection of the plaintiff's statements that her medications affected
21 her concentration and made her dizzy where no objective evidence was put
22 forth and the ALJ properly found her testimony was generally not
23 credible). Plaintiff has not met her burden in this case.

24
25 The record does not contain any references to side effects caused
26 by Plaintiff's medications. Plaintiff testified that she did not
27 suffer from any side effects from the medication but that it made her
28 "quiet." (See AR 330). Moreover, Plaintiff's medical records report

1 that she was not suffering from medication side effects. (AR 241-42,
2 244-48, 280-83). Accordingly, Plaintiff has failed to put forth
3 clinical evidence showing Abilify or Paxil affected her ability to
4 sustain employment. See Miller, 770 F.2d at 849. The Court concludes
5 that the ALJ properly considered the limited evidence in the record
6 regarding the side effects of Abilify and Paxil. Therefore, remand is
7 not warranted.

8
9 **CONCLUSION**

10 Consistent with the foregoing, IT IS ORDERED that Judgment be
11 entered AFFIRMING the decision of the Commissioner and dismissing this
12 action with prejudice. IT IS FURTHER ORDERED that the Clerk of the
13 Court serve copies of this Order and the Judgment herein on counsel for
14 both parties.
15

16 DATED: October 1, 2007.
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18 /S/
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SUZANNE H. SEGAL
21 UNITED STATES MAGISTRATE JUDGE
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